

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply To:

2800, 2880, 3100

(922.WL) P

June 29, 2006

EMAIL TRANSMISSION -06/29/06

Instruction Memorandum No. MT-2006-063

Expires: 9/30/07

To: Field Managers

From: State Director

Subject: Template for Documenting Categorical Exclusions (CX) Based on
Section 390 of the Energy Policy Act of 2005

Program Area: Oil and Gas Operations; Lands and Realty (energy-related
rights-of-way)

Purpose: The purpose of this Instruction Memorandum (IM) is to provide a template (Attachment 1) for documenting the use of the statutory National Environmental Policy Act (NEPA) CXs as granted in Section 390 of the Energy Policy Act of 2005 for oil and gas exploration and development. This IM supplements Washington Office (WO) IM No. 2005-247 (Attachment 2). This IM is being prepared in response to questions raised by the Field Offices.

Policy/Action: Field Offices are directed to use the attached template to document the use of the statutory CXs that apply to oil and gas exploration and development that were established in Section 390 of the Energy Policy Act of 2005. Specific instructions for each new CX are included in WO IM No. 2005-247. Additional explanation and guidance is provided in Attachment 3 including Questions and Answers regarding the use of the CXs.

Following are the five categories of CXs:

1. Individual surface disturbances of less than five (5) acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.
2. Drilling an oil and gas location or well pad at a site at which drilling has occurred within five (5) years prior to the date of spudding the well.
3. Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five (5) years prior to the date of spudding the well.

4. Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five (5) years prior to the date of placement of the pipeline.
5. Maintenance of minor activity, other than any construction or major renovation of a building or facility.

Timeframe: Implement immediately.

Budget Impact: Implementation of this policy is expected to provide some savings in staff time and budget associated with approval of APDs and related realty actions.

Background: Section 390 of the Energy Policy Act of 2005 established five new statutory NEPA CXs. This section of the Act took effect on the date of enactment, August 8, 2005. These exclusions are different in several respects from those historically used by the Bureau.

Manual/Handbook Sections Affected: NEPA Handbook H-1790-1.

Coordination: Coordination occurred among the Branch of Fluid Minerals, the Branch of Land Resources, the Branch of Planning and Biological Resources, and the affected Field Offices. A draft template was sent out for Field Office review and comment. No comments regarding the template were received.

Contact: Please direct any questions to Jim Albano at (406) 896-5111, Will Lambert at (406) 896-5328, or Craig Haynes at (406) 896-5040.

Signed by: Sandra C. Berain, Acting

Authenticated by: Janie Fox (MT920)

3 Attachments

- 1-Template for Documenting CX (2 pp)
- 2-WO IM 2005-247 (14 pp in its entirety)
- 3-Q&As Related to CXs (7 pp)

Distribution

Assistant Field Manager, Glasgow -1
 Assistant Field Manager, Havre - 1
 SOMT

Montana/Dakotas Template
Decision on Action and Application for Categorical Exclusion
For Activities Associated with Oil and Gas Development
Section 390, Energy Policy Act of 2005

[Project Name]
Bureau of Land Management
[Name] Field Office

PART 1: Description of the Proposed Action

[Provide a description of the proposed activity.] [Provide any pertinent facts including type of activity, applicable legal land description, and number of acres to be disturbed. Include maps as applicable] [State the proposal is designed in conformance with all bureau standards and incorporates appropriate best management practices, and required and designed mitigation measures determined to reduce the effects on the environment.]

PART II: Plan Conformance

[Provide statement that the proposed activity is in conformance and consistent with management objectives and decisions found in the [Name] Resource Management Plan approved on [Date of Approval].]

PART III: Compliance with the Energy Policy Act of 2005

[State that the proposed activity has been determined to be statutorily categorically excluded from NEPA documentation in accordance with Section 390 of the National Energy Policy Act of 2005.]

[Check the appropriate line(s) to identify the CX used]

____ 1. Individual disturbance of less than five (5) acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

[Identify which NEPA document(s) include the proposed activity.] [State this (these) document(s) has (have) been reviewed and has (have) been determined to consider potential environmental effects associated with the proposed activity at a site specific level.] [State that the disturbance on the lease is less than 150 acres] [Document how this determination was made including maps, tally sheets, aerial photo, etc. including an explanation of recent disturbances on the lease]

____ 2. Drilling an oil and gas location or well pad at a site at which drilling has occurred within five (5) years prior to the date of spudding the well.

[Include the date of the previous well completion (or other drilling/workover operations)] [Include a statement that the well site was previously disturbed within the last 5 years] [Include a reference to the previous NEPA document that was used to approve the original operation]

____ 3. Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five (5) years prior to the date of spudding the well.

[Identify the name and date of approval of the NEPA document which identifies the proposed activity as reasonably foreseeable.] [Include a statement that the well is in a developed field (see Q&As for definition)] [Include a narrative explaining the well and disturbance is within the current RFD]

____ 4. Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five (5) years prior to the dated of placement of the pipeline.
[Identify the name and date of approval of the NEPA document approving the corridor where the proposed pipeline will be placed.] [Include a description of the existing corridor]

____ 5. Maintenance of a minor activity, other than any construction or major renovation of a building or facility.
[Include a narrative statement describing the “minor” nature of the activity]

[For any of the five categories, include a listing of any technical reviews or reports completed during review of the proposed action]

Persons and Agencies Consulted

[Include documentation that an interdisciplinary review was utilized] [Describe persons and agencies consulted, including the citation of laws and regulatory requirements (such as ESA and NHPA), the proposed activity and the steps taken based on this consultation][Provide a description of public involvement or review, if any, including posting of actions in public rooms, etc.]

PREPARER

Name of Preparer: _____ Date: _____

PART IV: Decision and Rationale on Action

I have decided to implement [insert description of action(s), and reference to any mitigation measures, COAs, map and drawings, etc., pertinent to decision.] [Provide statement these mitigation measures, COAs and/or terms and conditions provide justification for this decision and may not be segregated from project implementation without further NEPA review.] In addition, I have reviewed the plan conformance statement and have determined that the proposed activity is in conformance with the applicable land use plan(s). Further, I have reviewed the proposal to ensure the appropriate exclusion category as described in Section 390 of the Energy Policy Act of 2005 has been correctly applied. It is my determination that no further environmental analysis is required.

[If the decision is made for categories 2, 3, or 4, provide a date by which the activity must be implemented.]

Implementation Date

This project will be implemented on or after [insert implementation date and identify any conditions related to implementation.]

[Insert deciding official’s name]

[Date]

[Insert deciding official’s title]

PART IX: Administrative Review or Appeal Opportunities

[Include the appropriate appeal rights for the activity approved. These will differ depending on the authorization granted (lease right vs ROW)]

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

September 30, 2005

In Reply Refer To:
3160 (310), 1790 (210), 2800 (350) P

EMS TRANSMISSION 09/30/2005
Instruction Memorandum No. 2005-247
Expires: 09/30/2006

To: All Field Officials

From: Director

Subject: National Environmental Policy Act (NEPA) Compliance for Oil, Gas, and Geothermal Development

Program Areas: Oil, Gas, and Geothermal Exploration and Operations; Lands and Realty (energy-related rights-of-way); Environmental Coordination.

Purpose: This Instruction Memorandum (IM) provides guidance for improved NEPA compliance in oil, gas, and geothermal exploration and development operations on public lands. It specifically provides instructions for developing a range of reasonable alternatives in environmental impact statements (EIS) for oil, gas, and geothermal development projects; interim guidance on the application and use of statutory NEPA categorical exclusions (CX), as granted in Section 390 of the Energy Policy Act of 2005, for oil and gas exploration and development; expanded use of multiple well environmental assessments (EA) and EISs; expanded use of the Documentation of NEPA Adequacy (DNA); and consideration and application of Best Management Practices (BMP).

Background: Section 390 of the Energy Policy Act of 2005 (the "Act") established five new statutory NEPA CXs. These exclusions are different in several respects from those historically used by the Bureau.

Additionally, the increasing number of approved and anticipated oil, gas, and geothermal projects on public lands, and the increase in the number, complexity, and controversy of EISs and other NEPA analyses associated with exploration and development of oil, gas, and geothermal resources, has prompted the need for additional national guidance.

Policy/Action: Field Offices are directed to incorporate the following NEPA procedures when analyzing and reviewing oil, gas, geothermal, and energy-related projects. This interim policy is in effect until Departmental Manuals, BLM Manuals, and/or BLM Handbooks are revised or additional guidance is issued.

Range of Alternatives

Departmental Manuals, guidance from the Council on Environmental Quality (CEQ), and BLM Handbooks contain guidance for developing a range of reasonable alternatives in NEPA documents. Additional guidance for developing a range of reasonable alternatives for oil, gas, and geothermal development EISs is contained in Attachment 1. The attached guidance applies to all EISs that have not as yet progressed beyond publication of a draft document, and strong consideration should be given to those documents in the final preparation stages (final EIS), but have not been approved for publication. Environmental Assessments are not addressed by the policy contained within Attachment 1.

Section 390 Categorical Exclusions (CX)

Section 390 of the Energy Policy Act of 2005 established five new statutory CXs that apply only to oil and gas exploration and development (the CXs do not apply to geothermal actions). These CXs are different in application from the CXs previously used by the BLM, and are further described in Attachment 2.

Until further guidance is issued, the guidance in Attachment 2 is to be carefully followed to assure accurate and consistent application of the new CXs.

Field Offices shall maintain a structured, multi- or interdisciplinary permit review and approval process, conduct onsite exams for 100 percent of proposed well and road locations, and shall apply appropriate mitigation and BMPs to all permitted actions, in accordance with existing land use plans, full field development EIS, and other pertinent NEPA documents, even when actions are approved through the use of Section 390 CXs.

Multiple Well EA/EIS

An EA or EIS prepared for development of two or more oil, gas, or geothermal wells provides substantial time savings over writing individual EAs or EISs for each well approval and generally results in improved impact analysis.

Effective immediately, all BLM Offices will address multiple proposed activities (e.g. multiple wells within a field) through a single NEPA action, whenever practical (Attachment 3 provides specific guidance).

Documentation of NEPA Adequacy (DNA)

The appropriate use of DNAs for oil, gas and geothermal operations is to be expanded in all Field Offices (Attachment 4 and WO IM 2001-162 provide detailed guidance).

Tracking

The use of Section 390 CXs is to be tracked and tabulated for Fiscal Year 2006 on the table in Attachment 5. If any Section 390 CXs were approved during Fiscal Year 2005, add them into the Fiscal Year 2006 table. Maintain the table in each Field Office as a reference for addressing future CX data calls.

Timeframe: Implement immediately.

Budget Impact: Full implementation of these policies is expected to provide substantial savings in staff time and budget associated with approval of APDs and related realty actions.

Manual/Handbook Sections Affected: NEPA Handbook H-1790-1.

Coordination: Coordination occurred among the Washington Office Fluid Minerals Group; Planning, Assessment and Community Support Group; Land and Realty Group; and Office of the Solicitor – Department of the Interior.

Contact: Please direct any questions to Tom Hare, Washington Office Fluid Minerals Group (WO-310), at (202) 452-5182 or tom_hare@blm.gov, Jordon Pope, Washington Office Planning, Assessment and Community Support Group (WO-210), at (202) 452-5048 or jordon_pope@blm.gov, Ron Montagna, Lands and Realty Group (WO-350), at (202) 452-7782 or ron_montagna@blm.gov.

Signed by:
Kathleen Clarke
Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

5 Attachments

- 1 – Developing a Range of Reasonable Alternatives in Oil, Gas, and Geothermal Exploration and Development Environmental Impact Statements (EIS) (3 pp)
- 2 – Use of Section 390 Categorical Exclusions for Oil and Gas Development (5 pp)
- 3 – Use of Multiple Well Environmental Assessments (EA) or Environmental Impact Statements (EIS) for Oil and Gas Development (1 p)
- 4 – Use of Documentation of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy (DNA) (1 p)
- 5 – Section 390 Categorical Exclusion Tracking Log (1 p)

**Developing a Range of Reasonable Alternatives
in Oil, Gas, and Geothermal
Development Environmental Impact Statements (EIS)**

Introduction

Environmental Impact Statements (EISs) for oil, gas, and geothermal development must evaluate and analyze a range of reasonable alternatives that provide the decision maker and the public with alternative means of meeting the purpose and need for the action, including alternative forms of mitigation for a “clear choice of options.” The guidance that follows pertains to post-leasing National Environmental Policy Act (NEPA) analysis and not to land use plan revisions or amendments.

Section 102(2)(3) of NEPA requires agencies to consider “appropriate alternatives” to the proposed action and describe their environmental consequences. The Council on Environmental Quality (CEQ) regulations at 40 CFR 1502.14(a) require that agencies rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives eliminated from detailed study, briefly explain the reasons for elimination.

The courts have clarified that the agency’s obligation is to analyze an appropriate range of alternatives, not “every alternative.” Headwaters, Inc. v. Bureau of Land Management, 914 F.2d 1174, 1180-81 (9th Cir. 1990). The NEPA “requires an agency to set forth only those alternatives necessary to permit a reasoned choice.” Hells Canyon Alliance v. U.S. Forest Service, 227 F.3d 1170, 1181 (9th Cir. 2000).

The alternatives that must be analyzed are those (1) which meet the purpose and need for the proposed action; (2) which reduce the adverse environmental effects of the proposed action; (3) which are feasible; (4) whose effects can be analyzed; and (5) which are not substantially similar in effects to an alternative that is analyzed.

Role of the Purpose and Need in Defining the Range of Alternatives

You must have a well-defined purpose and need. The Purpose and Need statement describes the BLM’s purpose of and need for action. The background section for the Purpose and Need statement should take into account the needs and goals of the parties involved in the application and the function that the agency plays in the decisional process, i.e. that after the lease is issued, the agency has already decided that oil and gas development in general is acceptable, but now must decide whether to approve the means of doing so at a particular location proposed by the applicant. The Purpose and Need cannot be so “unreasonably” narrow as to eliminate otherwise reasonable alternatives from consideration. To the extent possible, the Purpose and Need section should tie to existing decisions, policy, regulation, or law.

The Purpose and Need section of an oil, gas or geothermal NEPA analysis should include the BLM's energy goals; a description of the actions proposed in the lessee's applications; and conformity with the goals, objectives, and decisions of the applicable land use plan for the project areas.

For example, in abbreviated form the Purpose and Need might read, "The purpose and need of this full field development is to determine whether to permit environmentally responsible exploration and development of the oil and gas resource within the project area, consistent with the existing leases to continue to meet the nation's energy needs. This includes development of appropriate mitigation consistent with the goals, objectives, and decisions of the *(name)* RMP and applicable policies, regulations, and laws. The exploration and future development of the oil and gas resources will help supply our future domestic energy needs and play an integral part in our nation's energy security.

A range of reasonable alternatives must be developed based on the purpose and need for the action.

Recommended Oil, Gas, and Geothermal Alternatives

It is generally appropriate for EISs addressing oil, gas, and geothermal development to consider the following alternatives:

- No Action Alternative: This alternative is based on denial of the proposed action and generally assumes that no new drilling would occur in the project area on Federal mineral estate beyond what is currently permitted and/or actions analyzed and approved through previous NEPA decision documents (e.g. previous field development document). The No Action Alternative must be analyzed, regardless of conformance with the purpose and need, or its feasibility. This is a mandatory requirement under CEQ regulations, and necessary to provide a clear choice of management options for the decision maker.

Note for example, a new proposed action for 40 acre spacing is now under review. The No Action alternative analysis would be based on denial of the proposed 40 acre spacing. However, the alternative must consider the impacts of development of any previously authorized oil and gas development not part of the proposed action (i.e., 160 acre spacing), even if that level of development is not yet completed (by referencing the previously completed NEPA document).

- Proponent's proposed action as modified by any statutory requirements (such as endangered species protection).
- Proponent's proposed action with BLM recommended mitigation (including the Best Management Practices (BMP) described in WO-IM-2004-194). If the proposed action adequately mitigates identified impacts and includes BMPs, a specific BLM recommended mitigation alternative is not necessary.
- Other reasonable alternatives that address identified impacts, such as development with additional mitigation (such as alternative well locations, alternative access routes, additional timing or spacing constraints; offsite mitigation, different methods for treating produced water, horizontal well drilling, or other technologies).
- In addition, based on the new statutory CXs, alternatives that analyze the impacts of higher well density and development levels beyond what is proposed should be considered. Including such analysis will facilitate the use of the statutory CXs in the future should development require well densities greater than what is currently proposed.

The BLM shall examine reasonable alternatives that would reduce impacts, even if implementation would require amendment of the applicable land use plan. The BMPs, such as those found at www.blm.gov/bmp, should be considered in the development of the alternatives and mitigation. The BLM offices are strongly encouraged to look outside their administrative boundaries and consider what is being applied in similar operations at other locations across the nation. Field Offices and operators are continually developing and applying new techniques and technologies to reduce impacts and costs. Many mitigation techniques successfully used in one BLM office may be directly applicable to another locale. Basic oil, gas, and geothermal drilling and production requirements are surprisingly similar throughout the industry and there is little rationale for not considering successful mitigation strategies and alternatives developed in other offices and regions.

Use of Section 390 Categorical Exclusions for Oil and Gas Development

Section 390 of the Energy Policy Act of 2005 (the “Act”) establishes statutory categorical exclusions (CX) under the National Environmental Policy Act (NEPA) that apply to five categories of oil and gas exploration and development on Federal oil and gas leases. Section 390 does not apply to geothermal leases. This section of the Act took effect on the date of enactment, August 8, 2005.

The use of the new statutory CXs is not dependent on the Council for Environmental Quality (CEQ) process for approving new CXs. Additionally, the CXs established by Section 390 are not subject to the requirement in 40 CFR 1507.3 that would preclude their use when there are extraordinary circumstances. This is because the CXs addressed in this guidance are established by statute and not under the CEQ procedures pursuant to 40 CFR 1507.3 and 1508.4.

This guidance provides direction to the Field and State Offices on the immediate implementation of this new authority. This is interim guidance and may be modified when BLM promulgates a revision to Onshore Oil and Gas Order No. 1.

The law prescribes that for five categories of oil and gas operations, applicability of the Section 390 categorical exclusions is presumed, but subject to rebuttal. The five categories are:

1. *Individual surface disturbances of less than five (5) acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.*
2. *Drilling an oil and gas location or well pad at a site at which drilling has occurred within five (5) years prior to the date of spudding the well.*
3. *Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five (5) years prior to the date of spudding the well.*
4. *Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five (5) years prior to the date of placement of the pipeline.*
5. *Maintenance of a minor activity, other than any construction or major renovation o(f) a building or facility.*

In reviewing an Application for Permit to Drill (APD), Surface Use Plan of Operations, or pipeline application involving a proposed activity that fits into one of the above-described five categories, the appropriate CX is to be applied, and it may be presumed that no further NEPA analysis is required. Specifically, if one or more of five statutorily-created CXs applies to a proposed activity, Field Officials are not to use the existing CX review process or apply the extraordinary circumstances in 516 Departmental Manual. The Authorized Officer should apply the CX unless the activity does not meet the standard prescribed in the law to qualify for the exclusion. The Authorized Officer must include a brief narrative in the well file stating the rationale for making the determination that the categorical exclusion applies. If more than one CX is applicable, the rationale for the determination for each CX needs to be included in the well file. Field Offices are advised not to prepare a NEPA document in lieu of appropriately applying the statutory CXs. Environmental Best Management Practices (BMP) and other suitable mitigation are to be applied to permit approvals in accordance

with current national policy. The application of site-specific measures does not require additional NEPA documentation.

Nothing in the Act or these instructions precludes the use of the Documentation of NEPA Adequacy (DNA) process, where appropriate. Moreover, when a DNA can be justified based on existing NEPA documents (i.e., EA or EIS), it may be employed even if the document is not as recent or the disturbance so minor as to qualify for one of these CXs.

Specific instruction for each new CX is stated below:

1. The first categorical exclusion in the Act applies to: *“(1) Individual surface disturbances of less than five (5) acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.”*

This requires the Authorized Officer to do three things before applying this exclusion to any authorization. First, the Authorized Officer must determine that the action under consideration will disturb less than five acres on the site. If more than one action is proposed for a lease (e.g., two or more wells), each activity is counted separately and each may disturb up to five acres. Similarly, the five-acre limit should be applied separately to each action requiring discrete BLM action, such as each APD, even though for processing efficiency purposes the operator submits for BLM review a large Plan of Development (POD) addressing many wells.

Second, the Authorized Officer must determine that the current unreclaimed surface disturbance readily visible on the entire leasehold is not greater than 150 acres, including the proposed action. This would include disturbance from previous rights-of-way issued in support of lease development. If one or more Federal leases are committed to a BLM approved unit or communitization agreement, the 150 acre threshold applies separately to each lease. For larger leases, the requirement for adequate documentation would be satisfied with a copy of the most recent aerial photograph in the file with an explanation of recent disturbance that may not be shown on the aerial photos. Maps, tally sheets, or other visuals may be substituted for aerial photographs.

Finally, this categorical exclusion includes the requirement of a site-specific NEPA document. For the purposes of this categorical exclusion, a site-specific NEPA analysis can be either an exploration and/or development EA/EIS, an EA/EIS for a specific POD, a multi-well EA/EIS, or an individual permit approval EA/EIS. The NEPA document must have analyzed the exploration and/or development of oil and gas (not just leasing) and the action/activity being considered must be within the general boundaries of the area analyzed in the EA or EIS. The NEPA document need not have addressed the specific permit or application being considered.

This CX may also be applied to geophysical exploration activities provided the above requirements have been met. For example, if an oil and gas exploration and development EIS analyzes the site-specific impacts of 3D geophysical exploration within the oil and gas field, this CX may apply to subsequent 3D geophysical activities conducted within the field.

The above requirements, that is, the five acre threshold, 150 acre unreclaimed disturbance limit, and a site-specific NEPA document that addressed oil and gas development are the only applicable factors for review pursuant to this statute, but all must be satisfied in order to use this CX.

2. The second exclusion applies to *“Drilling an oil and gas location or well pad at a site at which drilling has occurred within five (5) years prior to the date of spudding the well.”*

The well file narrative to support use of this CX must state the date when the previous well was completed or the date the site had workover operations involving a drilling rig of any type or capability; this also includes completion of any plugging operations. A “location or well pad” is defined as a previously disturbed or constructed well pad used in support of drilling a well. “Drilling” in the context of, “Drilling has occurred within five (5) years” refers to any drilled well including injection, water source, or any other service well. Additional disturbance or expansion of the existing well pad is not restricted as long as it is tied to the original location or well pad. This exclusion does not extend to new well sites merely in the general vicinity of the original location or well pad.

If the operator delays in spudding the new well and the time period between the previous well completion and spudding exceed 5 years, the operator must suspend preparation for drilling operations until the BLM completes NEPA compliance for the proposed well and issues a new decision on the APD. Therefore, the APD must contain a condition of approval (COA) stating that “If the well has not been spudded by (the date the CX is no longer applicable), this APD will expire and the operator is to cease all operations related to preparing to drill the well.”

The above requirements, that is, the drilling of a well at an existing location or well pad and the five year limitation are the only two applicable factors for review pursuant to this statute, but must both be satisfied in order to use this CX.

3. The third exclusion applies to *“Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five (5) years prior to the date of spudding the well.”*

This may become one of the most commonly used CX established by the Act. The proposed well must be within a developed oil and gas field. A developed field is any field in which a “confirmation well” has been completed. Normally, this is after the third well in a field. The pending APD must also be within the reasonably foreseeable development scenario (RFD) used in either a land use plan EIS or subsequent developmental EA or EIS. Finally, the new well must be spudded within 5 years of that previous NEPA document. This provision applies to “any environmental document” that analyzed drilling, meaning any document adopted by any Federal agency pursuant to NEPA, regardless of whether it was adopted by the BLM. Because the 5-year period is again tied to the spudding of the pending well, the APD must contain a COA that if no well is spudded by the date the CX is no longer applicable, the APD will expire, thus requiring the operator to obtain a new APD. For example, “If the well has not been spudded by (the date the categorical exclusion is no longer applicable), this APD will expire and the operator is to cease all operations related to preparing to drill the well.”

Full field development EISs do not need to be prepared where the development envisioned was analyzed in the land use plan EIS. As long as the development foreseen does not exceed the number of wells and/or surface disturbance analyzed in the prior NEPA document, no additional NEPA documentation is required because of changes in the density of development.

All of the following requirements must be met to use this CX:

- 1) The proposed APD is within a developed oil or gas field. A developed field is defined as any field in which a confirmation well has been completed.

- 2) There is an existing NEPA document (including that supporting a land use plan) that contains a reasonably foreseeable development scenario broad enough to encompass this action.
- 3) The NEPA document was finalized or supplemented within five years of spudding the well.

4. The fourth exclusion applies to: *“Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five (5) years prior to the date of placement of the pipeline.”*

The 5-year time period is to be calculated from the most recent date that a decision (NEPA or permit authorization) was approved to allow use of the corridor. This means that more recent amendments to the corridor may have reset the time period clock. The time period extends to the date placement of any portion of the new pipeline is concluded, provided that placement activities began within the 5-year period. If the operator delays in beginning to place the pipeline, and the time period between the approval of the corridor and placement exceeds five years, the authorized officer must suspend the right-of-way authorization until the BLM completes NEPA compliance for the proposed right-of-way and issues a decision. To avoid problems, the right-of-way must contain a term or condition that provides for the suspension of the authorization if placement does not begin before the last date that the CX is available, thus requiring the operator to obtain a new right-of-way.

Existing right-of-way corridors of any type can be used for new pipeline placement, such as the burial of a pipeline or pipeline conduit in an existing roadbed or along a power line right-of-way, could qualify for the exclusion. The term “right-of-way corridor” in Section 390 is not limited to those authorized under 43 CFR 2800, but is a more generalized term that applies to any type of corridor or right-of-way (whether on or off lease) approved under any authority or vehicle of the BLM, including Sundry Notices. Additional disturbance or width needed to properly or safely install the new pipeline may be authorized under this exclusion if it is within the approved right-of-way corridor. Creation of a new right-of-way completely outside and not overlapping into a portion of the existing corridor is not authorized.

The above requirements, that is, the placement of a pipeline in an existing corridor of any type and placement of the pipe within five years of approval (or amendment) are the only two applicable factors for review pursuant to this statute and must both be satisfied to use this CX.

Other types of new right-of-way applications cannot be excluded from NEPA analysis under this exclusion, for example, above ground power lines, or new roads; however, existing right-of-way corridors, such as roads, may be used for new pipeline or pipeline conduit in an existing roadbed.

5. The fifth exclusion applies to *“Maintenance of a minor activity, other than any construction or major renovation of a building or facility.”*

This CX applies to maintenance of minor activities, such as maintenance of the well or wellbore, a road, wellpad, or production facility. The exclusion does not cover construction or major renovation of a building or facility. The addition of a compressor or a gas processing plant would therefore not be eligible for this CX.

Please Note: The CX (1) and (3) reference previous NEPA documents. Field Offices must apply the same or better mitigating measures considered in the parent NEPA documents to all actions approved under any CX. Additionally, BMPs are to be applied as necessary to reduce impacts to any authorization issued, regardless of the NEPA analysis or exclusion used.

Use of Multiple Well Environmental Assessments (EA) and Environmental Impact Statements (EIS) for Oil, Gas, and Geothermal Development

The following policy and procedure primarily applies to oil and gas development, but may also be applied in part to geothermal operations with multiple wells.

Rather than completing repetitive EAs for each Application for Permit to Drill (APD), substantial time savings and improved impact analysis can be obtained through a single NEPA analysis that addresses a Plan of Development (POD) or multiple-wells. This technique allows a single document to meet the NEPA requirements for multiple actions.

Some developmental EAs/EISs incorporate a highly effective method of projecting potential well and road locations on a map based on State spacing requirements, topography, subsurface geology, and lease stipulation constraints as part of the proposed action. With this technique, a map of the development area is produced where projected/possible well locations and access roads are clearly identified. Often, the final locations are drilled close to the projected locations. This technique allows for a more site-specific analysis of impacts in the EA/EIS. All Field Offices should consider this method of location projection when analyzing the impacts of oil, gas and geothermal development.

Proposed actions subsequent to the initial action for which the NEPA analysis is prepared may be considered for approval through the use of appropriate statutory CXs (see Attachment 2), or are reviewed using the Documentation of NEPA Adequacy (DNA) form, when statutory CXs do not apply, to ensure the proposed activity has been appropriately analyzed (see Attachment 4).

Effective immediately, all BLM Offices will address multiple proposed activities (e.g. multiple wells within a field) through a single NEPA action, whenever practical.

There are several ways to apply this policy so that it will not delay the operators who choose not to submit APDs or related rights-of-way in a logical grouping such as a POD. One option is to complete an analysis as an “umbrella” EA/EIS that analyzes “x” number of wells that will potentially be submitted over the next few years within an oil or gas field. The EA/EIS could set a time and number limit for future APDs.

Another option is to select a discrete geographic area and conduct the analysis specific to that area, estimating an anticipated (but not yet submitted) number of APDs. In these cases, additional NEPA documentation for current or future APDs and related rights-of-way within the scope of the EA/EIS analysis should rarely be necessary.

These multiple-well or POD EAs/EISs facilitate improved analysis of cumulative impacts. It is also easier to compare the impact reduction from best management practices when applied over a larger area for multiple wells. The NEPA analysis should examine at least one alternative that incorporates the applicable BMPs as described in WO-IM-2004-194, Integration of Best Management Practices into APD Approvals and Associated Rights-of-Way.

**Use of Documentation of Land Use Plan Conformance
and National Environmental Policy Act (NEPA) Adequacy (DNA)**

The use of DNAs is an effective tool in NEPA compliance in oil, gas, and geothermal development. The ability to use the DNA process is dependent on the type and adequacy of existing NEPA documents, because it is a process that documents the existence of *adequate* NEPA analysis.

When the new categorical exclusions (CX) do not apply, Field Offices are to next consider the DNA process, as described in WO IM 2001-062 – Documentation of Land Use Plan Conformance and National Environmental Policy Act (NEPA) Adequacy, in permitting oil, gas, and geothermal operations for qualifying actions

Attachment 5
Section 390 Categorical Exclusion Tracking

FY2006

State	Field Office	< 5 Acres	Same Pad	RFD/ Developed Field	Pipeline Corridor	Maintenance	Total
AK	Anchorage						
CA	Bakersfield						
CO	Cañon City						
	Craig/Kremmling						
	Durango						
	Grand Junction						
	Meeker						
ES	Jackson						
	Milwaukee						
	Eastern States						
MT	Dickinson						
	Great Falls						
	Miles City						
NV	Reno						
NM	Carlsbad						
	Farmington						
	Hobbs						
	Rio Puerco						
	Roswell						
	Tulsa						
UT	Moab/Price						
	Salt Lake						
	Vernal						
WY	Buffalo						
	Casper						
	Rock Springs						
	Kemmerer						
	Lander						
	Newcastle						
	Pinedale						
	Rawlins						
	Worland/Cody						
	Nationwide						

Categorical Exclusions under Section 390 of the Energy Policy Act of 2005

Energy Policy Act of 2005 Categorical Exclusions (CX) are listed below followed by a short explanation statement.

1. *Individual surface disturbances of less than five (5) acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to the National Environmental Policy Act (NEPA) has been previously completed.*
Ties to a site-specific NEPA document and surface disturbance for each individual action is less than 5 acres, and there is no more than 150 acres of disturbance per individual lease, even if the lease is part of a multi-lease unit.
2. *Drilling an oil and gas well at a location or well pad site at which drilling has occurred within five (5) years prior to the date of spudding the well.*
A new well can be drilled on an old well pad within 5 years of the previously drilled well.
3. *Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed drilling as a reasonably foreseeable activity, so long as such plan or document was approved within five (5) years prior to the date of spudding the well.*
Ties to a more general RMP/EIS or other NEPA document, less than 5 years old, which analyzed drilling as a reasonably foreseeable activity that considered the proposed wells. Development must occur in an existing field containing a confirmation well (confirms the oil or gas resource exists in paying quantities).
4. *Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within five (5) years prior to the date of placement of the pipeline.*
Allows placement of a pipeline within any type of existing right-of-way provided the last use of the corridor was approved within 5 years. The pipeline can be off-lease, but it must be a pipeline authorized under the Mineral Leasing Act (MLA).
5. *Maintenance of a minor activity, other than any construction or major renovation of [f] a building or facility.*
Covers basic maintenance.

Key Points:

- The Section 390 Categorical Exclusions are not traditional CXs.

- The Section 390 CXs are not subject to the 12 “extraordinary circumstances” that apply to the Department of Interior Bureaus.
- The CXs exclude the proposed actions from the need to conduct additional NEPA analysis. All exclusions contemplated some type of previous NEPA analysis.
- The most common exclusion for Application for Permit to Drill (APD) approval may be #3. However, #3 has a definite 5 year time limit that will require Field Offices to update their field wide Environmental Assessments (EAs) or Environmental Impact Statements (EISs) if they are to continue using this categorical exclusion. We anticipate multiple well (Plan of Development – “POD”) EAs will become more common as the full field development and land use planning documents begin to age beyond 5 years.
- The new Categorical Exclusions only apply to environmental analyses required by the National Environmental Policy Act. BLM must still comply with the National Historic Preservation Act (NHPA), the Endangered Species Act, and other applicable environmental statutes. Compliance with these statutes will have to be accomplished independent of the BLM NEPA process when a project qualifies for one of the new CXs,.
- When a CX is used, BLM must continue to: conduct onsite inspections and interdisciplinary staff review; apply appropriate Best Management practices and APD conditions of approval; and comply with leasing stipulations and land use plan decisions.
- Field offices are expected to continue to maintain an interdisciplinary APD review process.
- For each proposed action, document and use as many of the CXs as are applicable.

Questions & Answers Related to Statutory Categorical Exclusions under Section 390 of the Energy Policy Act of 2005

Statutory Categorical Exclusions under Section 390 of the Energy Act of 2005

CX #1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to the National Environmental Policy Act (NEPA) has been previously completed.

CX #2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

CX #3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

CX #4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

CX #5) Maintenance of a minor activity, other than any construction or major renovation of a building or facility.

General Questions

(1) Question: Does 43 CFR 3162.5-1 require the preparation of an “environmental record of review” when one of the statutory categorical exclusions (CX) applies?

Answer: No. The regulation only requires the preparation of an environmental record of review “as appropriate.” Such a record is not appropriate in light of Section 390 of the Energy Policy Act (the Act).

(2) Question: Do you need to document use of a statutory CX?

Answer: Yes. Document which statutory CX(s) was used and how the specific requirements for using the statutory CX(s) are/were met.

(3) Question: Can Conditions of Approval (COAs)/Best Management Practices (BMPs) be attached to a CX without further justification through a NEPA document?

Answer: Section 17 of the Mineral Leasing Act (MLA) gives the Bureau of Land Management (BLM) authority to impose COAs, such as BMPs, without NEPA analysis when BLM is excused from NEPA analysis by a categorical exclusion.

(4) Question: Can the application of a statutory CX be appealed?

Answer: A party appealing a decision on a proposed action can dispute whether the statutory CX was properly applied. Documentation of the use of a statutory CX will be an important part of the record reviewed for the action under appeal.

(5) Question: What level of detail must be in the existing NEPA document to support the application of a statutory CX?

Answer: The document used to support CX #1 must contain site-specific details. The document used to support CX #3 only has to consider and analyze the contemplated drilling as a “reasonably foreseeable activity.”

(6) Question: Assuming that the level of impacts analyzed has been exceeded, will a statutory CX that depends upon an existing NEPA document still apply?

Answer: Additional NEPA documentation is required if the development foreseen exceeds the impacts analyzed in the existing NEPA document.

(7) Question: Do we have to use the statutory CXs?

Answer: If a CX applies, it should be used. In some situations, the use of Documentation of NEPA Adequacy (DNA) can provide a more appropriate and expanded administrative record without slowing the approval process. The use of DNAs as an alternative to the statutory CXs should be at the discretion of the Field Manager. If this flexibility begins to slow the process or is used routinely in lieu of appropriate statutory CXs, that flexibility can be narrowed or reduced in subsequent Instruction Memorandum (IM).

(8) Question: Do extraordinary circumstances as defined in 516 of the Departmental Manual (DM) apply when a statutory CX is used?

Answer: No. Statutory CXs are not subject to the extraordinary circumstances provisions in 516 DM. However, Section 390 of the Act does not eliminate the requirements of other statutes, such as the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, etc.

(9) Question: Can geophysical activities for data collection by a non-lessee qualify under these statutory CXs?

Answer: CX #1 would apply so long as there is less than 5 acres of surface disturbance, overall surface disturbance is not greater than 150 acres, and the proposed activity has been previously subject to site-specific NEPA analysis.

(10) Question: Does the Forest Service (FS) injunction resulting from the *Earth Island Institute* case apply to these statutory CXs?

Answer: No. The injunction only applies to the FS appeals process.

(11) Question: What do we do if the IM 2005-247 definition of a “minor activity” conflicts with a Resource Management Plan (RMP) definition?

Answer: The IM definition of “minor activity” for the statutory CXs is to be used when a statutory CX is used. The RMP definitions were not established for this purpose.

Surface and Mineral Estate Questions

(12) Question: Section 390 of the Act refers to public lands. Do the statutory CXs apply to split estate?

Answer: Yes. The statutory CXs apply to split estate lands where the oil and gas estate is federally owned and leaseable under the MLA.

(13) Question: Do the statutory CXs apply to FS lands? If yes, who is responsible for documenting the use of the statutory CX(s)?

Answer: Section 390 of the Act applies to both the FS and the BLM. The BLM and FS are both responsible for keeping their own administrative records for use of a statutory CX.

(14) Question: Do the statutory CXs apply to Indian leases?

Answer: No.

Categorical Exclusion #1 Questions

(15) Question: CX #1 states that the proposed action must be within the general boundary of the parent NEPA document. Does this mean it can be outside of that boundary? If so, how far?

Answer: CX #1 only applies to drilling within the area analyzed in a prior NEPA document. The proposed action cannot be located outside the area previously analyzed.

(16) Question: What constitutes a site-specific NEPA document for CX #1?

Answer: A site-specific NEPA document may be an exploration and/or development Environmental Assessment (EA)/Environmental Impact Statement (EIS), an EA/EIS for a specific Plan of Development (POD), a multi-well EA/EIS, or an individual permit approval EA/EIS. The site-specific NEPA document must have analyzed the exploration and/or development of oil and gas (not just leasing) and the action/activity being considered must be within the boundaries of the area analyzed in the EA or EIS.

(17) Question: How is the 150-acre limit of surface disturbance calculated for CX #1?

Answer: The 150-acre surface disturbance calculation includes disturbance associated with oil and gas activities and associated Rights-of-Ways (ROWs) regardless of surface ownership. It does not include surface disturbance from other activities. Areas disturbed for oil and gas operations that have been successfully reclaimed and meet final reclamation standards do not count towards the 150-acre surface disturbance limit. Successfully reclaimed surface disturbance is considered to be undisturbed land.

(18) Question: If the surface disturbance predates a current lease holder's interest in a lease, does that unreclaimed surface disturbance count in the 150-acre calculations?

Answer: Yes.

(19) Question: Does the 5-acre surface disturbance threshold limit described in CX #1 defeat the purpose of using a POD or batching Applications for Permit to Drill (APD) for processing and approval?

Answer: The 5-acre threshold limit applies to each individually approved activity, such as an APD approval. It does not apply to a POD. If a POD has 20 wells, the statutory CX is to be applied 20 times for a maximum allowable disturbance of 100 acres.

(20) Question: What is included in the 5-acre threshold limit?

Answer: The 5-acre threshold limit includes all surface disturbances on a lease associated with a proposed action, such as an APD. In the case of an APD, the 5-acre threshold would include disturbances for construction of the well pad, roads, utilities, and production facilities.

Categorical Exclusion #3 Questions

(21) Question: Can CX #3 be used for proposed drilling actions relying exclusively on a RMP/EIS?

Answer: Yes, CX #3 can be used for proposed drilling so long as the drilling was analyzed as a reasonably foreseeable activity in the RMP/EIS and was analyzed within the last 5 years and it is within a developed field.

(22) Question: Does the use of CX #3 depend on the level of detail described in the RMP/EIS?

Answer: No, It does not depend on the level of detail described in the RMP/EIS. The statute makes no requirement of detail for use of this exclusion; only CX # 1 has a level of detail requirement.

(23) Question: CX #3 refers to drilling an oil or gas well within a developed field. What is the definition of a developed field?

Answer: For the purpose of applying this CX, a developed field is an area where a second well has been drilled and completed to confirm the oil or gas reservoir discovered by the initial well.

Categorical Exclusion #4 Questions

(24) Question: Can CX #4 be used for pipeline placement relying exclusively on a RMP/EIS?

Answer: Yes, CX #4 can be used for pipeline placement if the corridor was designated and approved in an RMP/EIS and that document was approved within the last 5 years.

(25) Question: Does the use of CX #4 depend on the level of detail described in the RMP/EIS?

Answer: No. The statute does not specify or require any level of detail for application of CX #4.

(25) Question: Do the statutory CXs apply to off-lease ROWs?

Answer: CX #4 applies to any ROW either on or off lease if they are granted under the authority of the MLA. CW #4 does not apply when seeking approval under other authorities. However, the use of existing corridors approved under other authorities may be used for placement of pipelines under CX #4.